IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CIVIL WRIT PETITION NO.2928/02

M/s. Khokhar Construction Company

Versus

State & Ors.

DATE OF ORDER :: 18/04/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Amin Ali, for petitioner
Mr. R.A. Katta] for respondents
Mr. J.K. Yadav]

***

Instant petition has been filed by petitioner assailing the order Ann.6 dated 29th April, 2002 whereby the respondents forfeited the earnest money as he was unable to commence the work in the specified period for which his tender was accepted by the respondents.

Petitioner also submitted his tender in the N.I.T. issued by the respondents. On acceptance of his tender, which was in relation to repair of roads and according to tender document, work was to be commenced and completed for the period from 28th December, 2001 to 27th August, 2002. Since petitioner for good reason could not commence the work in terms of conditions on which his tender was accepted, letters were issued from the office of respondents i.e. Ann.R/1 dated 30th January, 2002, Ann.R/2 dated 8th February, 2002, Ann.R/3 dated 14th February, 2002 & Ann.R/4 dated 22nd

February, 2002 and thus, finally his tender was cancelled and it was issued to the respondent No.5.

Counsel for petitioner submits that immediately on receiving the Work Order dated 21st December, 2001, the petitioner firm started working on Package No.01 Churu, District Churu and has installed Paver Plant as well and while the work was in progress, the bitumen, which the petitioner was purchasing from Mathura Refinery, due to some inevitable circumstances Mathura Refinery became closed and for this good reason, the bitumen could not be made available and he informed the respondent that he will arrange bitumen from Panipat Refinery and the work order will be completed within stipulated time. Despite information sent to their office on 19th April, 2002 [Ann.2], still the respondents have proceeded arbitrarily in cancelling his contract which was in violation of Article 14 of the Constitution and so also of principles of natural justice.

Counsel for respondents have seriously disputed the facts referred to by petitioner and submitted that after the contract was executed in terms of tender document, the petitioner infact failed to commence the work and reminders after reminders were sent calling upon petitioner to commence the work. Since the special repair of

roads for which contract was entered, was urgently required to be completed and when the petitioner failed to commence his work despite ample opportunity afforded, his contract was finally cancelled and earnest money which he had deposited was forfeited vide order dated 29th April, 2002 [Ann.6]. Counsel further submits that if still petitioner feels that his contract has been cancelled in violation of conditions of contract, he has alternative remedy for arbitration as provided under Clause 23 of the Agreement.

Even otherwise, in view of facts being disputed, this court cannot examine the dispute within the limited scope available under Article 226 of the Constitution. Moreso, when he has remedy under Clause 23 of the Agreement to proceed for arbitration which has been specifically raised by the respondents in the preliminary objection as well.

Consequently, the writ petition fails and is hereby dismissed. However, petitioner will be at liberty to avail remedy available to him under law.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.